

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.804 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI PRAVINCRUSH METAL WORKS
VERSUS
STATE OF GUJARAT & ORS.

Appearance:

MR SK ZAVERI for Petitioner
None present for Respondents

Coram: S.K. Keshote,J
Date of decision: 16/02/1998

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner and perused the Special Civil Application and reply filed by respondents.

#. The facts of the case are that the petitioner-firm was granted mining lease, the Survey No.104/1 of village Mal Zinzva of Talala Taluka, District Junagadh for a period of ten years on 21st May 1970. The petitioner was served with a notice from Collector, Junagadh, dated 2.2.72, under which the lease of the petitioner-firm was cancelled after sixty days under Part IV Section 2 of the agreement for lease. After the said notice of cancellation of lease, the petitioner has requested the respondent to grant lease of Survey No.128/1 of Village Umrethi, in exchange of Survey No.104/1 of Mal Zinzva. It is not in dispute that the prayer made by petitioner for exchange of lease at village Umrethi, in Survey No.128/1 was not granted by the respondents. However, it is an admitted fact that the petitioner has been granted, vide order dated 26th September 1973, a temporary permit for excavation of Black Stone at village Umrethi and under that temporary permit, the petitioner was entitled to excavate the Black Stone to the extent of 200 tonnes only. That temporary lease was only valid for two months. The Clerk, Talala, filed a complaint against the petitioner before the Mamlatdar, Talala, on 28th November 1974, for taking appropriate action in the matter. That complaint came to be decided by the Mamlatdar and he passed an order for recovery of Rs.2,303.20 as royalty from the petitioner. This order has been passed on 30.1.76. Thereafter the Mamlatdar, Talala, passed another order on 30th April 1976, in furtherance of the earlier order and in addition to recovery the royalty of Rs.2,303.20, the petitioner was directed to pay Rs.85,175.35 as cost of excavated mineral Black Stone of 3407.35 tonnes. This amount has been calculated at the rate of Rs.25/- per ton. The petitioner preferred an appeal against the order dated 30th April 1976 before the Gujarat Revenue Tribunal and that appeal came to be decided by the Tribunal on 13th September 1978. The appeal was allowed and the order of the Mamlatdar dated 30th April 1976 was set aside and the matter has been remanded back to the Mamlatdar for rehearing of the matter. After rehearing the matter, the Mamlatdar, passed an order on 20th April 1981 maintaining his earlier order. Once again the petitioner preferred an appeal before the Gujarat Revenue Tribunal against this order, which came to be rejected by an order dated 2nd September 1983. Hence this Special Civil Application.

#. The learned counsel for the petitioner contended that

as per Section 2 of Part IV of the lease, the petitioner was entitled to continue to hold possession of lease of Survey No.104/1 till the respondent constructs reservoir on the said land. The petitioner had a right to excavate mineral also and for excavation of mineral, royalty could have been charged and accordingly the Mamlatdar has rightly charged the royalty. It has next been contended that the Mamlatdar has no power to review its own earlier order and to order for recovery of the costs of Black Stone mineral which has been excavated by the petitioner. The Mamlatdar has no powers of suo-motu review as the statute under which he acted nowhere confers any such powers upon him. It has next been contended that the Tribunal, while deciding the earlier appeal of the petitioner, has remanded the matter to the Mamlatdar with specific directions that it has to first decide the issue of jurisdiction to review its own order, but that issue has not been decided and the Mamlatdar has assumed the powers of review without there being any statutory provision available to him. The Tribunal has also erred by not appreciating this aspect and the Tribunal has felt content to consider its previous order only to the extent of giving opportunity of hearing to the petitioner in the matter. Lastly, the learned counsel for the petitioner contended that the Tribunal has decided the matter taking into consideration that the petitioner has excavated Black Stone to the tune of 3407.35 tonnes from 1.7.73 to 30.6.74 at Umrethi, which is not factually correct. Mineral has been excavated from Survey No.104/1 and as such, no cost of mineral could have been ordered to be recovered from the petitioner. The notice of unauthorized excavation which was given by the Mamlatdar to the petitioner was in respect of Survey No.104/1 and not from Survey No.128/1 at Umrethi. So the whole order of the Tribunal vitiates.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. It is not in dispute that the possession of lease area land bearing Survey No.104/1 has been taken by respondent on 5th October 1972. The learned counsel for the petitioner contended that this was only paper possession as the physical possession of the leased area remained with the petitioner and the petitioner has excavated mineral therefrom till the reservoir has been constructed thereon. The reservoir is stated to be constructed only in the year 1974.

#. The petitioner has admitted that it has been granted a temporary permit to excavate 200 tonnes of Black Stone

Mineral from the Survey No.128/1 at village Umrethi. This permit was given to the petitioner on 26th September 1973. In the present case, the Mamlatdar has proceeded with presumption and assumption that the mineral has been excavated from Survey No.104/1. However, the petitioner, on the record of this Special Civil Application, has not produced any material to show and establish, neither it has produced any material to show and establish before the Gujarat Revenue Tribunal, that the mineral in dispute i.e. Black Stone, has been excavated by it from Survey No.104/1. This unauthorized excavation pertains to the period from 1st July 1973 to 30th June 1974. It is true that before the Tribunal as well as before this Court, this unauthorized excavation of Black Stone mineral has been stated to be from Survey No.128/1 at village Umrethi. Though before the Mamlatdar, the case was of unauthorized excavation of mineral from Survey No.104/1, but it is only a factual error. There is no question of excavation of any mineral by petitioner from Survey No.104/1 as the possession thereof has been taken by respondent on 5th October 1972. It is too difficult to believe that only the paper possession has been taken and physical possession of the same remained with the petitioner. The petitioner has failed to produce any material on the record to show and establish that physical possession of quarry of Survey No.104/1 of Mal Zinzva remained with it. When the possession has been taken after termination of lease, it is not otherwise permissible for the petitioner to carry on any excavation of mineral and in fact, the petitioner knowing this fact well, has taken a temporary permit for excavation of mineral Black Stone from Survey No.128/1 at village Umrethi. That permit was only for excavation of 200 tonnes of Black Stone but the petitioner has unauthorisedly excavated the mineral and for this unauthorized excavation, the petitioner has rightly been penalized. It has to pay the costs of mineral which has unauthorisedly been excavated. The petitioner has admitted as a fact that it has excavated the mineral but a defence which has been taken is that this has been excavated from Survey No.104/1 and as such only the royalty could have been charged. The Mamlatdar also fell in error in proceeding with the matter as if it is a case of charge of royalty, but the Mamlatdar has lost sight of the fact that the possession of the leased area of Survey No.104/1, after termination of said lease, has been taken over by the respondent and the only excavation could have been and should have been from another area, i.e. Survey No.128/1 of village Umrethi. The petitioner has taken law in its own hands and though the permit was only for excavation of Black Stone of 200 tonnes, it has

unauthorisedly excavated Black Stone to the extent of 3000 and odd tonnes more and as such, for this illegal excavation the petitioner was rightly directed to pay the costs of this mineral. Taking into consideration this fact, the petitioner cannot be allowed to retain the unauthorisedly excavated Black Stone under the garb of this technical plea. The substance of the matter has to be considered and when the petitioner is unable to prove to the satisfaction of the Tribunal as well as this Court that it has excavated this mineral from Survey No.104/1, the Tribunal and the respondent have rightly proceeded by holding that this mineral has been excavated from Survey No.128/1 of village Umrethi. The Clerk has rightly made a complaint against the petitioner and the Mamlatdar has, for the reasons best known to him, felt contended by firstly only ordering for payment of royalty but he has, in later point of time, realizing his mistake, corrected the same and the petitioner has rightly been directed to pay the costs of the mineral excavated. In view of these facts, the question whether the Mamlatdar has jurisdiction to review his earlier order, is of no consequence. Any citizen of the country should not be permitted to draw benefit from the mineral which is the property of the Government. A citizen can only excavate the mineral where he has been permitted and in case any unauthorized excavation is made then certainly he has to compensate to the Government by paying the costs thereof. The Mamlatdar as well as the Tribunal have not committed any error or illegality which calls for interference of this Court sitting under Article 226 of the Constitution of India. On the other hand, on these technical points, if the matter is decided in favour of the petitioner then this Court will enrich the petitioner though it was not entitled for excavation of Black Stone mineral beyond permissible limit.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)